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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,534	08/09/2006	Victor Casana Giner	38438.00.0004	7644

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VEDDER PRICE P.C.
222 N. LASALLE STREET
CHICAGO, IL 60601

EXAMINER

YOUNG, MICAH PAUL

ART UNIT	PAPER NUMBER
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1618

MAIL DATE	DELIVERY MODE
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10/07/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/596,534	Applicant(s) CASANA GINER ET AL.	
	Examiner MICAH-PAUL YOUNG	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3,21 is/are rejected.
- 7) ☐ Claim(s) 4-20,22 and 23 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>11/21/06, 9/25/06</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Acknowledgement of Papers Received: Amendment to the claims dated 8/9/06.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 9/25/06 and 11/21/06 were filed after the mailing date of the Specification on 6/15/06. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Objections

Claims 4-20, 22 and 23 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot be dependent from more than one multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims 4-20, 22 and 23 will not be further treated on the merits. Claims 4-10, 12-20, 22 and 23 recite the phrase "any appropriate combination of the proceeding claims", however this is improper since multiple dependent claims must be referred to in the alternative and not in combination with each other. Claim 11 is dependent from improperly dependent claims and as such is not properly dependent. Accordingly, the claims 4-20, 22 and 23 are not further treated on the merits.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The term "hot" in claim 2 is a relative term which renders the claim indefinite. The term "hot" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The term "hot" is not defined by the claim. The claim is attempting to recite a method of forming an emulsion by combining an oil phase, hydrophilic phase under agitation at an elevated temperature, however it is unclear how high the temperature is elevated. Room temperature is approximately 25 degrees C, and some emulsion can form at temperatures as low as 30 degrees C. Clarification is required.

Claim 3 recites that the "solid state is basically achieved by temperature drop after hot forming" however the term "basically" is unclear. Basically implies that the tablets could be formed by another method but more often than not the tablets can be formed by a drop in temperature or cooling. Or the term could imply that a more complicated method of forming is required, yet the large steps in the process of a cooling method. As there are multiple interpretations of the claim's term, the claim is indefinite. Further claim 3 recites the phrase "according to the preceding claim", however there are two preceding claims, and it is unclear which claim is being referred to and which claim, claim 3 depended from. Clarification is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-3 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Holderbaum et al (US 2002/0004472 hereafter '472).

The '472 patent teaches a tablet formulation that releases a gas, specifically CO₂ gas formed by carbonate molecules, comprising an acid or alkali compound [0306-0309] in an emulsion comprising an emulsifier with a HLB of 16 such as polyglyceryl-10 laurate or an HLB of 5 such as Dimethicone [0160-0165]. The emulsion comprises a hydrophilic polymeric compound such as polyethylene glycols [0148-0149] along with an oil phase that further comprises that remains solid at temperatures below 30 degrees C [0133-0140, 0238], the phase can further include dyes and perfumes that are release during use of the tablet [0328]. The oils include natural vegetable oils [0240] while the acids include organic acids such as malic and succinic acid [0273]. The tablet further comprises sequestering agents such as EDTA [0123]. The tablet further comprises bleaching agents such as hydrogen peroxide and other peroxides that upon ingestion act as emetics [0312]. The preferred method of forming the tablets includes blending the ingredients, melting the components and pouring them into molds for shaping [0111]. As the agitation or temperatures not defined in the claim any agitation including that of moving the heating molten emulsion from the heat source and pouring the viscous liquid into a mold would qualify as agitation.

Regarding product claims that recite an intended use for the tablet is the position of the Examiner that such future intended uses do not distinguish over the prior art. The prior art has disclosed a structurally complete and identical product. The recitation of a new use for an old product does not make the product novel or non-obvious. However, when the claim recites using an old composition or structure and the "use" is directed to a result or property of that

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composition or structure, then the claim is anticipated. In re May, 574 F.2d 1082, 1090, 197 USPQ 601, 607 (CCPA 1978). For these reasons the claims are anticipated.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICAH-PAUL YOUNG whose telephone number is (571)272-0608. The examiner can normally be reached on Monday-Friday 8:00-5:30; every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael G. Hartley/
Supervisory Patent Examiner, Art Unit 1618

/MICAH-PAUL YOUNG/
Examiner, Art Unit 1618